IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION NO.5031 OF 1997

For Approval & Signature:

Hon'ble MR.JUSTICE S.K.KESHOTE

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1. Whether reporters of local papers may be allowed to see the judgment ?

2. To be referred to the reporters or not ?

3. Whether their lordships wish to see the fair copy of the judgment ?

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950, or any order made thereunder ?

5. Whether it is to be circulated to the Civil Judge?

JA POLARA

VERSUS

DISTRICT PANCHAYAT, KUTCHH & ORS.

Appearance:

MR IS SUPEHIA for petitioner

MR HS MUNSHAW for respondents No.1 & 2

Coram: MR.JUSTICE S.K. Keshote,J

Date of decision: 19/12/2000

C.A.V. JUDGMENT

#. This case clearly exhibits how negligently, carelessly and without any sense of responsibility and duty which the officers of the District Panchayat owe to the public, have acted in the present case. As a result of their acting negligently, carelessly and without any sense of responsibility what will be the effect thereof is very serious and the State exchequer is heavily burdened. In the discipline and appeal rules, there is a very specific provision that in case as a result of negligence or carelessness of an officer of the District Panchayat or State Government, if either of it suffers financial loss, that loss has to be made good by that officer. However, for this, the disciplinary authority has to initiate departmental inquiry against the erring officer. It is unfortunate in the country that the officers and employees of the State Government or District Panchayats are all the time concerned of their rights, demands, facilities and comforts, but seldom either of them bother for their responsibilities and duties. Instances of recurring of negligence, carelessness in performance of duties by the officers in the State are rampant. Because of this, the State exchequer has to bear heavy burden but nobody bothers. The officers and employees act, work and proceed in discharge of official duties as if they are not accountable to anybody. That feeling of the officers and employees seems to be correct for the reason that permanent regular accountability Cell may not be established by the State Government and for their grave and serious negligence, carelessness and being unaware of their duties they owe to the people, they are not punished. High time has now come where the State Government has to take care, otherwise, the financial condition of the State is likely to deteriorate day by day as a result of negligence, carelessness and totally being unaware of the duties which the officers owe to public at large.

#. The facts of the case in hand are that the petitioner, a primary teacher of the Kutchh District Panchayat was prosecuted for offences punishable under section 409 of Indian Penal Code, an offence involving moral turpitude and the Judicial Magistrate sentenced him for rigorous imprisonment for six months and fine of Rs.1,000/= vide judgment dated 31.7.79. This judgment of the Judicial Magistrate has been challenged by petitioner by filing appeal to the Sessions Court. The Sessions Court maintained conviction but reduced the sentence of imprisonment till rising of the court by judgment dated 25.2.80. The petitioner filed Criminal Revision Application before this Court but that has been

dismissed.

#. In a case where the petitioner has been found guilty of offence punishable under section 409 of Indian Penal Code and the learned Judicial Magistrate has sentenced him to undergo rigorous imprisonment for six months and to pay a fine of Rs.1,000/=, it is really shocking that the Sessions Court has taken liberal view and sentence of imprisonment has been reduced till rising of the court. This liberal attitude of the court in the matter of offences involving moral turpitude committed by the employee of the District Panchayat and Government makes the position worse and it may give message and free hand to the employees and officers to indulge in such activities as there remains no fear of imprisonment in their mind and they feel that even if the Judicial Magistrate convict and sentenced them to suffer rigorous imprisonment for the term, it can be got reduced on filing appeal by them before the Sessions Court. These are the offences where very severe punishment has to be given more so when in the country it is said by people that corruption amongst the officers and employees is ransom. That is one part which relates to court proceedings.

#. The worst part is there when we go to the administrative side of the District Panchayat, Kutchh. After this conviction for an offence involving moral turpitude, the petitioner should have been dismissed from the services of the respondent-District Panchayat but the officers of the District Panchayat, an impersonal machinery, have felt content and satisfied by passing order dated 3rd March 1980 placing the petitioner under suspension. He was ordered to be paid subsistence allowance of Re.1/= p.m. The petitioner collected the same for two months only. On conviction of the petitioner for offence involving moral turpitude, it is expected and desirable on the part of the officers of the District Panchayat to give show cause notice to the petitioner and only punishment which would have been given in such case would have been of dismissal or removal of the petitioner from services. Suspension order, in the facts of this case from the officers of the District Panchayat, Kutchh, came as a gift to the petitioner and it is no more of any doubt that it comes as a lottery to the petitioner. Naturally, after attaining the age of superannuation, the petitioner started to make claim for his retirementary benefits. By letter dated 20.1.95, the petitioner requested the authorities to pay him the provident fund dues since he was going to reach the age of superannuation. He was

called upon to send application through the office where he worked last. On inquiry, the petitioner submitted that, he found that he was never dismissed or removed from the services nor he was paid subsistence allowance after he was placed under suspension.

#. In this petition, the petitioner prayed for the following reliefs:

(A) Directing the respondents to treat the petitioner as under suspension from 6.3.80 to 31.10.97 and to pay him the subsistence allowance at Re.1/= per month and further to treat the petitioner as on duty for the purpose of retiral benefits, pension, gratuity etc. and to fix and pay the same w.e.f. 1.11.97 onwards;

(B) If prayer (A) is not granted then the respondents may be directed to pay to the petitioner the subsistence allowance at the normal rate of 50% or 75% from 5.12.83 till further orders are passed by the competent authority as regards suspension;

(C) During the pendency and final disposal of this petition, respondents may be directed to prepare the pension papers of the petitioner on the basis that he is in continuous service since 14.7.58....

#. During the course of arguments, the learned counsel for the petitioner very fairly submitted that the petitioner is satisfied in case he is given subsistence allowance for the period from the date of suspension to the date of his attaining the age of superannuation.

#. That seems to be a reasonable approach, otherwise, it would have been very difficult for the court, though the officers had made it easy for the petitioner to get all those benefits, to grant the petitioner the retirementary benefits, in this case where he has been punished for an offence involving moral turpitude. That is not the end of the matter. This petition has been filed in the year 1997. Rule was issued to the respondents on 1st September, 1997, but they have not bothered to give reply to the special civil application. On 28th September, 2000, this court directed the District Primary Education Officer, Bhuj-Kutchh, to remain personally present in the court along with relevant record of the matter. On 13.10.2000, nobody was present and then this court ordered for presence of District Development Officer,

District Panchayat, Kutchh-Bhuj, along with relevant record of the matter. The matter was ordered to stand over to 19th October, 2000. On this date, the District Development Officer was present. The counsel for the District Development Officer prepared, brought and presented to the court, a reply to the special civil application. This court returned the reply. The respondents have lost their right to file reply to the special civil application as the same has not been filed within reasonable time. They have no right nor any such right can be conferred to file reply to the special civil application on their desire or convenience. The very fact that on 13.10.2000, this court ordered for presence of officer with some record goes to show that this court had not permitted or desired from the respondents to file reply to the special civil application.

#. The learned counsel for the respondents, on being asked by the court, is unable to say why departmental action has not been taken and appropriately the petitioner has not been punished on his conviction for the offence involving moral turpitude by the court. The learned counsel for the respondent has admitted that no departmental action has been taken against the petitioner nor any order of his dismissal or removal from the services has been made. He admits that only order made after his conviction for an offence involving moral turpitude by the court was to place him under suspension.

#. On reaching the age of superannuation by the petitioner, it is difficult at this stage to order for holding of departmental action and passing of the appropriate order for his dismissal/ removal from the services. If we go by the provisions of the Bombay Civil Service Rules, 1989, which are undisputedly applicable to the District Panchayat employees also, there may be some difficulty with the respondents to initiate departmental action now against the petitioner. Moreover, after reaching the age of superannuation, otherwise also, possibly no penalty of dismissal, removal or termination from services can be ordered against the petitioner. In case of the retirement of an employee, on proof of the charge, order can be made for cut in pension. There is yet another reason for which no such direction needs to be given. The learned counsel for the petitioner has fairly given up the claim of the petitioner for pension and other retirementary benefits. He is only praying for giving to the petitioner, the suspension allowance from the date on which he was placed under suspension till the date he attained the age of superannuation. Last but not least, otherwise also, in case where this prayer for

grant of retirementary benefits would have been pressed, this court in the facts of this case could have declined the same. An employee who has been convicted and punished for offence involving moral turpitude cannot be given all these benefits under Article 226 of the Constitution even in a case where the Department would have dismissed him from services in a case where it would have been challenged. This prayer made if granted, will result in conferring all service benefits to an employee who has misappropriated the public money. This extra ordinary equitable jurisdiction of this court is not meant to give these benefits to such an employee. This remedy is meant for honest employees and not for those who made misappropriation of the public money.

##. The learned counsel for the respondents is in agreement that the Rule providing for giving Re.1/= per month as subsistence allowance has been struck down by the Hon'ble Supreme Court and the necessary Circulars are also issued after decision of the Hon'ble Supreme Court and now subsistence allowance has to be given as per rules provided, i.e. for first six months of suspension, 50% of wages and after six months, 75% of it. In these facts of the case, there is no question of any delay in approaching to the Tribunal by the petitioner.

##. Mr.Munshaw, learned counsel for the respondents strongly contended that the petitioner has not raised this demand at any point of time and he raised this only after he reached the age of superannuation. He further submitted that the petitioner has not filed any affidavit that he was not in gainful employment elsewhere during this period.

##. In the facts which emerge from the pleadings of the petitioner, it appears that the petitioner considered himself to have been dismissed from the services by the respondents. But it is not in dispute that the respondents have to pass a specific, positive and definite order of removal or dismissal of the petitioner from the services on his conviction for offence involving moral turpitude by the court. So in absence of such an order, the petitioner is to be taken under suspension for all these years, i.e. from the date of order of suspension till the date of reaching the age of superannuation.

##. The learned counsel for the petitioner, in support of his claim made for subsistence allowance, placed reliance on the recent decision of the Apex Court in the case of Jagdamba Prasad Shukla v. State of U.P. & Ors.,

reported in 2000 AIR SCW 3047. In that case, the Hon'ble Supreme Court has held that payment of subsistence allowance to an employee under suspension is not a bounty. It is a right. An employee is entitled to be paid the subsistence allowance. Non payment of subsistence allowance on grounds that he had not furnished the address where the amount was to be sent and had also not given requisite certificate indicating that he was not employed else during the period of suspension, is not justified. The Supreme Court has further held that at no stage, the employee was told that he had to furnish such a certificate, and that he could not be paid subsistence allowance without it.

##. In this case also, the petitioner was not, at any stage during this long period, told by respondents that he has to furnish such certificate. It is most unnatural, unreasonable and unfair on the part of the District Panchayat, a `State' within the meaning of Article 12 of the Constitution to put all the blame on the petitioner. The officers of the District Panchayat owe duty, responsibility and accountability to the people and they have to take care of the matters and have to act according to the law and the action should have been taken against the petitioner on his conviction for the offence involving moral turpitude by the court for his dismissal or removal from services. Instead of doing so, they remained totally silent in the matter and when the petitioner filed this petition, are raising all these questions. It is a clear case of negligence, carelessness and unmindful of their duties they owe to people of the officers of the District Panchayat. The respondents cannot be permitted to take benefits of their own inaction, negligence, carelessness and unmindful acts in performance of their duties which they owe to people. In fact, but for his conviction in criminal case by the court the petitioner would have been entitled for the retirement benefits also as after attaining the age of superannuation, no departmental inquiry could have been initiated against him for the incident which is 4 years old preceding the date of superannuation even with the approval of the State. The learned counsel for the petitioner has given up this claim and is not pressing for the same.

##. In the result, this special civil application succeeds and the same is allowed and it is hereby declared that the petitioner is entitled for subsistence allowance as per the Rules for the period from the date of suspension till the date of attaining the age of superannuation. This amount of subsistence allowance

payable to the petitioner to be determined by respondent No.2 within a period of one month from the date of receipt of Writ of this order and the amount so determined to be paid to the petitioner within fifteen days next. In the facts of this case, I do not find any justification in the prayer made by learned counsel for the petitioner for awarding interest on the arrears of subsistence allowance. This court cannot be oblivious of the fact that the petitioner has been convicted for offence punishable u/s.409 of Indian Penal Code and only because of the inaction, negligence and carelessness of the officers, the petitioner is getting this relief even after his conviction. It is in fact a gift or a lottery to the petitioner from the officers of this impersonal machinery. But for these officers, he would have been dismissed from the services.

##. The District Development Officer, Kutchh-Bhuj is directed to hold inquiry in this case and whosoever is found responsible for this inaction, negligence and carelessness in dealing with this matter, this amount which is to be paid to the petitioner, be recovered from those officers proportionately where more than one officer are found responsible. Even if these erring officers have retired, this liability will be there of theirs. This exercise has to be completed within a period of six months from the date of receipt of Writ of this order and compliance thereof to be reported to this Court.

##. Rule is made absolute in terms aforesaid with no order as to costs.

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(sunil)